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17 UNITED STATES DISTRICT COURT
18 FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

19 NATIONAL URBAN LEAGUE, et al.,

20 Plaintiffs,

21 v.

22 WILBUR L. ROSS, JR., et al.,

23 Defendants.

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CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' STATEMENT RE:
PRIVILEGE LOGS**

Date: TBD
Time: TBD
Place: Courtroom 8
Judge: Hon. Lucy H. Koh

1 Because Defendants have not provided a privilege log regarding their December 14
 2 production, Plaintiffs submit the following Statement Re: Privilege Logs to respectfully propose an
 3 additional round of briefing for privilege disputes to ensure that the Court and the parties are not
 4 hit with the entirety of the privilege disputes on December 23, 2020.

5 Pursuant to the Court's Amended Order Denying Motion for Reconsideration and
 6 Clarifying Order to Compel ("December 13 Order") (Dkt. 380), the parties filed a Joint Statement
 7 Re: Privilege Log and Privilege Disputes ("Joint Statement") (Dkt. 382). In the Joint Statement,
 8 Defendants represented to the Court that they would provide a privilege log relating to documents
 9 in the December 14, 2020 production. Joint Statement at 2 (**December 14, 2020:** Defendants
 10 provide their first privilege log, accompanying their production of over 60,000
 11 documents"). Subsequently, the Court referenced the "December 14 privilege log" in its
 12 December 15 Procedures For In Camera Review of Documents on Privilege Logs ("Order on
 13 Privilege Procedures") (Dkt. 383). Order on Privilege Procedures at 2. Presumably, the Court
 14 believed a privilege log had been provided (based on Defendants' representation). Plaintiffs
 15 likewise understood the Court's Order on Privilege Procedures to indicate that the Magistrate
 16 Judge Panel expected Defendants to produce a December 14 privilege log that would capture any
 17 documents withheld from the December 14 production of over 60,000 documents.

18 The only privilege log provided to Plaintiffs to date, with respect to their productions in
 19 response to Plaintiffs' November 17, 2020 Requests for Production, corresponds to Defendants'
 20 earlier, December 8, 2020 production of 516 documents. That privilege log references a total of 42
 21 withheld documents ("December 8 privilege log"), and has now been definitively resolved between
 22 the parties with Defendants producing 40 of the documents and continuing to withhold 2.¹ When
 23 Plaintiffs asked Defendants whether they had produced a December 14 privilege log, Defendants
 24

25 ¹ In accordance with the Order on Privilege Procedures, Plaintiffs provided Defendants with a list of
 26 challenged entries in Defendants' December 8 privilege log on December 16, 2020 prior to 3:00 p.m. P.M.
 27 Plaintiffs and Defendants then met and conferred on December 16, 2020 prior to 7:00 p.m. P.M., and were
 28 able to come to agreement regarding the privilege disputes. As a result, Plaintiffs understand that neither
 Plaintiffs nor Defendants will be filing briefing requiring a decision by the Magistrate Judge Panel regarding
 redacted or withheld documents from the December 8 privilege log.

1 acknowledged that they did not yet produce privilege log corresponding to the December 14
 2 production; to date, no such privilege log has been provided.

3 According to the prior Declaration of Brian DiGiacomo (“DiGiacomo Declaration”) (Dkt.
 4 376-2), of the approximately 88,765 documents ordered “to be produced to Plaintiffs by December
 5 14, 2020,” Defendants intended to withhold approximately 25,512 documents on the basis of
 6 privilege. DiGiacomo Declaration at 1-2. However, the December 8, 2020 privilege log contains
 7 merely 42 redacted or withheld documents. Exhibit A. Accordingly, Plaintiffs expect to receive a
 8 single privilege log from Defendants covering over 25,000 withheld documents—and perhaps
 9 containing many thousands of entries—on December 21, 2020 at 7:00 p.m. PT, in addition to
 10 additional log entries corresponding to Defendants’ productions from December 14 through
 11 December 21, 2020. To comply with the Court’s Order on Privilege Procedures, Plaintiffs would
 12 then be required to review all of these privilege log entries in 20 hours, and provide a list of all
 13 challenged objections to Defendants by December 22, 2020 at 3:00 p.m. PT. More significantly, the
 14 Magistrate Judge Panel would then be presented with briefing regarding objections to a subset of
 15 potentially thousands of privilege log documents on December 23, 2020, and would have to
 16 adjudicate this massive volume of privilege disputes in one fell swoop. This is infeasible, and places
 17 an enormous burden on both the Magistrate Judge Panel.

18 To ease the burden on the Magistrate Judge Panel and the parties, Plaintiffs respectfully
 19 propose that the Court order a modified privilege log schedule that adds the following:

- 20 • **December 17, 2020 by 5:00 p.m. PT:** Defendants produce a privilege log to Plaintiffs
 21 containing all documents redacted or withheld from the December 14, December 16, and
 22 December 17, 2020 productions.
- 23 • **December 18, 2020 by 10:00 a.m. PT:** Plaintiffs provide Defendants with a list of
 24 challenged entries.
- 25 • **December 18, 2020 by 12:00 p.m. PT:** Plaintiffs and Defendants meet and confer on
 26 privilege disputes.
- 27 • **December 19, 2020 by 12:00 a.m. PT:** Plaintiffs and Defendants filed simultaneous briefs
 28 on unresolved privilege disputes.

1 Plaintiffs propose that the privilege dispute process outlined in the Court's Order on Privilege
 2 Procedures, calling for Defendants to produce a privilege log by December 21 at 7:00 p.m. PT,
 3 continue largely as planned. In this way, Defendants' December 21 privilege log would contain any
 4 documents redacted or withheld from Defendants' December 18, December 19, December 20, and
 5 December 21 productions, and the parties would meet and confer, and submit briefing on these
 6 documents. Accordingly, the Magistrate Judge Panel would receive two, more manageable batches
 7 of privilege disputes, on December 19 and December 23 respectively, and Plaintiffs would not be
 8 required to work through tens of thousands of privilege log entries in less than two days, an
 9 impossible task.

10 For the aforementioned reasons, and in light of Defendants' failure to produce a December
 11 14 privilege log thus far, Plaintiffs respectfully seek an order from the Court modifying the
 12 privilege log dispute process as outlined above. Plaintiffs raised this issue with Defendants
 13 yesterday during a meet and confer, and presented this proposal to Defendants this morning.
 14 Plaintiffs shared a draft of this filing and sought to have a joint filing between the parties.
 15 Defendants were unable to provide a position or their ascent before this filing.

16

17 Dated: December 17, 2020

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21 **ATTESTATION**

22 I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this
23 document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred
24 in this filing.

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